

## § 301.7701(b)-5

M. B comes back to the United States on March 5, 1986 as a lawful permanent resident and remains in the United States until September 10, 1986, when he ceases to be a lawful permanent resident and returns to country M. B is not a resident in calendar year 1987. B's United States residency in calendar year 1985 continues through December 31, 1985, because he is a United States resident in the following calendar year. In calendar year 1986, B's United States residency is deemed to begin on January 1, 1986 because B qualified as a resident in the preceding calendar year. Thus, B's residency period in the United States begins on May 1, 1985, and ends on September 10, 1986.

[T.D. 8411, 57 FR 15247, Apr. 27, 1992; 57 FR 28612, June 26, 1992]

### § 301.7701(b)-5 Coordination with section 877.

(a) *General rule.* An alien individual will be subject to United States income tax in the manner provided by section 877, regardless of whether the individual has a tax avoidance motive, if—

(1) The alien individual is a resident alien of the United States for at least three consecutive calendar years (the initial residency period) beginning after December 31, 1984;

(2) The period of residence for each of the three consecutive calendar years includes at least 183 days;

(3) The alien is once again taxed as a nonresident (including an individual taxed as a nonresident) under § 301.7701(b)-7(a)(1); and

(4) The alien then becomes a resident of the United States before the close of the third calendar year beginning after the individual's residency termination date in the initial residency period.

(b) *Tax imposed.* The tax provided for under paragraph (a) of this section will be imposed for the intervening period of nonresidency only if the amount of tax would exceed the amount of tax that would be imposed under section 871, relating to the taxation of nonresident aliens.

(c) *Example.* The following example illustrates the application of this section.

*Example.* B, a citizen of foreign country F, enters the United States on April 1, 1985, as a lawful permanent resident. On August 1, 1987, B ceases to be a lawful permanent resident and returns to country F. B meets the initial residency period requirement because he is a resident of the United States for at

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least 183 days in each of three consecutive years (1985, 1986 and 1987). B returns to the United States on October 5, 1990, as a lawful permanent resident. Because B became a resident of the United States before the close of the third calendar year (1990) beginning after the close of the initial residency period (August 1, 1987), he is subject to tax under section 877(b) for the intervening period of nonresidency, August 2, 1987 through October 4, 1990, if the amount of the tax imposed under section 877 is more than the tax imposed under section 871.

[T.D. 8411, 57 FR 15250, Apr. 27, 1992]

### § 301.7701(b)-6 Taxable year.

(a) *In general.* An alien individual who has not established a fiscal year as his or her taxable year prior to the period that the individual is subject to United States income tax as a resident or a nonresident shall adopt the calendar year as his or her taxable year. An alien who has established a fiscal year in a foreign country prior to the period that the individual is subject to United States income tax may adopt the calendar year as his or her taxable year for United States income tax purposes without requesting a change in accounting period. An individual will be considered to have established a fiscal year (whether in the United States or a foreign country) if the annual accounting period on which the individual computes his or her income is a fiscal year, the individual keeps his or her books in accordance with that fiscal year, and the requirements of section 441 and § 1.441-1(b) of this chapter are otherwise satisfied. An alien who has established a fiscal year and is a resident alien during the calendar year will be treated as a resident alien with respect to any portion of his or her taxable year (beginning with the individual's residency starting date and ending with the individual's residency termination date) that falls within such calendar year. Once the individual has established either a fiscal or calendar year taxable year for any period for which the individual is subject to United States income tax, the individual may not change that taxable year without the approval of the Secretary. See section 442.

(b) *Examples.* The following examples illustrate the operation of this section:

*Example 1.* B, a citizen and resident of foreign country F, was engaged in a United States business during 1982 and filed a return on a fiscal year basis. B's fiscal year runs from October 1 to September 30. B comes to the United States on March 8, 1985 and remains in the United States until October 10, 1985, when he returns to country F. B maintains a closer connection to and his tax home in Country F for the remainder of calendar year 1985. B, who is not a United States resident at any time in 1986, is a United States resident for the period that begins on March 8, 1985, and ends on October 10, 1985. B has adopted a fiscal year taxable year for purposes of computing his United States income tax liability. For his fiscal year that ends on September 30, 1985, B will be taxed as a United States resident for the period that begins on March 8, 1985 and ends on September 30, 1985. For his fiscal year that ends on September 30, 1986, B will only be taxed as a United States resident for the period that begins on October 1, 1985 and ends on October 10, 1985.

*Example 2.* The facts are the same as in *Example 1*, except that B's 1982 business was a country F business established on a fiscal year basis and at no time prior to 1985 was B subject to United States income tax. B may adopt a calendar year as his taxable year for United States income tax purposes without requesting a change of accounting period. B continues to use a fiscal year as his taxable year. For his fiscal year that ends on September 30, 1985, B will be taxed as a United States resident for the period that begins on March 8, 1985 and ends September 30, 1985. For his fiscal year that ends on September 30, 1986, B will be taxed as a United States resident for the period that begins on October 1, 1985 and ends on October 10, 1985.

*Example 3.* The facts are the same as in *Example 1*, except that B's 1982 business was a country F business established on a fiscal year basis and at no time prior to 1985 was B subject to United States income tax. B may adopt a calendar year as his taxable year for United States income tax purposes without requesting a change of accounting period. B adopts a calendar year as his taxable year for 1985. For his calendar year taxable year ending on December 31, 1985, B will be taxed as a United States resident for the period that begins on March 8, 1985, and ends on October 10, 1985.

[T.D. 8411, 57 FR 15250, Apr. 27, 1992; 57 FR 28612, June 26, 1992, as amended by T.D. 8996, 67 FR 35012, May 17, 2002]

#### **§ 301.7701(b)-7 Coordination with income tax treaties.**

(a) *Consistency requirement*—(1) *Application.* The application of this section shall be limited to an alien individual

who is a dual resident taxpayer pursuant to a provision of a treaty that provides for resolution of conflicting claims of residence by the United States and its treaty partner. A "dual resident taxpayer" is an individual who is considered a resident of the United States pursuant to the internal laws of the United States and also a resident of a treaty country pursuant to the treaty partner's internal laws. If the alien individual determines that he or she is a resident of the foreign country for treaty purposes, and the alien individual claims a treaty benefit (as a nonresident of the United States) so as to reduce the individual's United States income tax liability with respect to any item of income covered by an applicable tax convention during a taxable year in which the individual was considered a dual resident taxpayer, then that individual shall be treated as a nonresident alien of the United States for purposes of computing that individual's United States income tax liability under the provisions of the Internal Revenue Code and the regulations thereunder (including the withholding provisions of section 1441 and the regulations under that section in cases in which the dual resident taxpayer is the recipient of income subject to withholding) with respect to that portion of the taxable year the individual was considered a dual resident taxpayer.

(2) *Computation of tax liability.* If an alien individual is a dual resident taxpayer, then the rules on residency provided in the convention shall apply for purposes of determining the individual's residence for all purposes of that treaty.

(3) *Other Code purposes.* Generally, for purposes of the Internal Revenue Code other than the computation of the individual's United States income tax liability, the individual shall be treated as a United States resident. Therefore, for example, the individual shall be treated as a United States resident for purposes of determining whether a foreign corporation is a controlled foreign corporation under section 957 or whether a foreign corporation is a foreign personal holding company under section 552. In addition, the application of paragraph (a)(2) of this section does not